

Change of Zone No. 3280

ORDINANCE NO. _____

1 AN ORDINANCE amending Title 27 of the Lincoln Municipal Code to allow
2 sexually oriented live entertainment establishments as a permitted special use in the H-1, H-2,
3 H-3, H-4, I-1, I-2, and I-3 zoning districts by adding new sections numbered 27.03.545,
4 27.03.564 and 27.03.566 to add definitions for "sexually oriented live entertainment
5 establishment," "specified anatomical areas," and "specified sexual activities," respectively;
6 amending Section 27.39.030 to allow sexually oriented live entertainment establishments as
7 a permitted special use in the H-1 Interstate Commercial District; amending Section 27.41.040
8 to allow sexually oriented live entertainment establishments as a permitted special use in the
9 H-2 Highway Business District; amending Section 27.43.040 to allow sexually oriented live
10 entertainment establishments as a permitted special use in the H-3 Highway Commercial
11 District; amending Section 27.45.030 to allow sexually oriented live entertainment
12 establishments as a permitted special use in the H-4 General Commercial District; amending
13 Section 27.47.030 to allow sexually oriented live entertainment establishments as a permitted
14 special use in the I-1 Industrial District; amending Section 27.49.040 to allow sexually
15 oriented live entertainment establishments as a permitted special use in the I-2 Industrial Park
16 District; amending Section 27.51.050 to allow sexually oriented live entertainment establish-
17 ments as a permitted special use in the I-3 Employment Center District; adding a new section
18 numbered 27.63.730 to allow sexually oriented live entertainment establishments by special
19 permit in the H-1, H-2, H-3, H-4, I-1, I-2, and I-3 zoning districts; and repealing Sections

1 27.39.030, 27.41.040, 27.43.040, 27.45.030, 27.47.030, 27.49.040, and 27.51.050 of the
2 Lincoln Municipal Code as hitherto existing.

3 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

4 Section 1. That Chapter 27.03 of the Lincoln Municipal Code be amended by
5 adding a new section numbered 27.03.036 to read as follows:

6 Section 2. That Chapter 27.03 of the Lincoln Municipal Code be amended by
7 adding a new section numbered 27.03.545 to read as follows:

8 **27.03.038 Sexually Oriented Live Entertainment Establishment.**

9 Sexually oriented live entertainment establishment shall mean any commercial
10 establishment that as a substantial or significant portion of its business features or provides any
11 of the following:

12 (1) Persons who appear showing specified anatomical areas.

13 (2) Live performances that are distinguished or characterized by an emphasis
14 on the exposure, depiction, or description of specific anatomical areas or the conduct or
15 simulation of specified sexual activities.

16 Sexually oriented live entertainment establishment shall not include any theater,
17 concert hall, art center, museum, or similar establishment which is primarily devoted to the
18 arts or theatrical performances and in which any of the circumstances contained in this section
19 were permitted or allowed as part of such art exhibits or performances.

20 Section 3. That Chapter 27.03 of the Lincoln Municipal Code be amended by
21 adding a new section numbered 27.03.564 to read as follows:

1 **27.03.564 Specified Anatomical Areas.**

2 Specified Anatomical Areas shall mean:

3 (a) Less than completely and opaquely covered human genitals; pubic region; anus;
4 or female breast below a point immediately above the top of the areolae, but not including
5 any portion of the cleavage of the female breast exhibited by a dress, blouse, shirt, leotard,
6 bathing suit, or other wearing apparel, provided the areolae is not exposed.

7 (b) Human male genitals in a discernibly turgid state, even if completely and
8 opaquely covered, or any device covering that, when worn, simulates male genitals in a
9 discernibly turgid state.

10 Section 4. That Chapter 27.03 of the Lincoln Municipal Code be amended by
11 adding a new section numbered 27.03.566 to read as follows:

12 **27.03.566 Specified Sexual Activities.**

13 Specified Sexual Activities shall mean any of the following:

14 (a) Fondling or other erotic touching of human genitals, pubic region, buttocks,
15 anus, or female breasts.

16 (b) Sex acts normal or perverted, actual or simulated, including intercourse, oral
17 copulation, or sodomy.

18 (c) Masturbation, actual or simulated.

19 (d) Human genitals in a state of sexual stimulations, arousal, or tumescence.

20 (e) Excretory functions as part of or in connection with any of the activities set forth
21 in (a), (b), (c) or (d) above.

1 Section 5. That Section 27.39.030 of the Lincoln Municipal Code be amended
2 to read as follows:

3 **27.39.030 Permitted Special Uses.**

4 A building or premises may be used for the following purposes in the H-1 Interstate
5 Commercial District if a special permit for such use has been obtained in conformance with
6 the requirements of Chapter 27.63:

- 7 (a) Expansion of nonconforming uses;
- 8 (b) Historic preservation;
- 9 (c) Public utility purposes;
- 10 (d) Wind energy conversion systems;
- 11 (e) Cemeteries;
- 12 (f) Sale of alcoholic beverages for consumption on the premises;
- 13 (g) Broadcast towers;
- 14 (h) Sale of alcoholic beverages for consumption off the premises;
- 15 (i) Sexually oriented live entertainment establishments.

16 Section 6. That Section 27.41.040 of the Lincoln Municipal Code be amended
17 to read as follows:

18 **27.41.040 Permitted Special Uses.**

19 A building or premises may be used for the following purposes in the H-2 Highway
20 Business District if a special permit for such use has been obtained in conformance with the
21 requirements of Chapter 27.63:

- 22 (a) Outdoor theaters;

- 1 (b) Broadcast towers;
- 2 (c) Extraction of sand, gravel, and soil;
- 3 (d) Church steeples, towers, and ornamental spires exceeding the maximum
- 4 permitted height of the H-2 Highway Business District;
- 5 (e) Outdoor lighting for recreational facilities;
- 6 (f) Expansion of nonconforming uses;
- 7 (g) Historic preservation;
- 8 (h) Public utilities purposes;
- 9 (i) Wind energy conversion systems;
- 10 (j) Cemeteries;
- 11 (k) Sale of alcoholic beverages for consumption on the premises;
- 12 (l) Sale of alcoholic beverages for consumption off the premises;
- 13 (m) Storage of vehicles for sale and resale on any portion of the lot where parking
- 14 is permitted;
- 15 (n) Sexually oriented live entertainment establishments.

16 Section 7. That Section 27.43.040 of the Lincoln Municipal Code be amended

17 to read as follows:

18 **27.43.040 Permitted Special Uses.**

19 A building or premises may be used for the following purposes in the H-3 Highway

20 Commercial District if a special permit for such use has been obtained in conformance with

21 the requirements of Chapter 27.63:

- 22 (a) Extraction of sand, gravel, and soil;

- (b) Bulk storage of petroleum products;
- (c) Broadcast towers;
- (d) Church steeples, towers, and ornamental spires exceeding the maximum permitted height in the H-3 Highway Commercial District;
- (e) Outdoor lighting for recreational facilities;
- (f) Expansion of nonconforming use;
- (g) Historic preservation;
- (h) Stores and shops for retail sales and service which exceed 20,000 square feet of floor area;
- (i) Public utility purposes;
- (j) Wind energy conversion systems;
- (k) Small batch concrete dispensing units;
- (l) Health care facilities;
- (m) Cemeteries;
- (n) Sale of alcoholic beverages for consumption on the premises;
- (o) Sale of alcoholic beverages for consumption off the premises;
- (p) Limited landfills;
- (q) Storage of vehicles for sale and resale on any portion of the lot where parking is permitted;
- (r) Sexually oriented live entertainment establishments.

Section 8. That Section 27.45.030 of the Lincoln Municipal Code be amended to read as follows:

27.45.030 Permitted Special Uses.

A building or premises may be used for the following purposes in the H-4 General Commercial District if a special permit for such use has been obtained in conformance with the requirements of Chapter 27.63:

- (a) Extraction of sand, gravel, and soil;
- (b) Bulk storage of petroleum products;
- (c) Stores and shops for retail sales and service of more than 30,000 but less than 100,000 square feet in floor area;
- (d) Any permitted use which exceeds the maximum height permitted in the district;
- (e) Facilities for the commercial storage or sale of fertilizer, or toxic or flammable agricultural chemicals;
- (f) Broadcast towers;
- (g) Expansion of nonconforming use;
- (h) Historic preservation;
- (i) Public utility purposes;
- (j) Wind energy conversion systems;
- (k) Planned service commercial development;
- (l) Small batch concrete dispensing units;
- (m) Cemeteries;
- (n) Sale of alcoholic beverages for consumption on the premises;
- (o) Sale of alcoholic beverages for consumption off the premises;
- (p) Early childhood care facilities;

1 (q) Sexually oriented live entertainment establishments.

2 Section 9. That Section 27.47.030 of the Lincoln Municipal Code be amended
3 to read as follows:

4 **27.47.030 Permitted Special Uses.**

5 A building or premises may be used for the following purposes in the I-1 Industrial
6 District if a special permit for such use has been obtained in conformance with the
7 requirements of Chapter 27.63:

8 (a) The refining, distillation or manufacture of:

- 9 (1) Acids or alcohols;
- 10 (2) Ammonia, bleach, or chlorine;
- 11 (3) Asphalt, tar, or products made therewith, including roofing or water-
- 12 proofing;
- 13 (4) Cement, lime, gypsum, or plaster of paris;
- 14 (5) Disinfectants;
- 15 (6) Dyestuffs;
- 16 (7) Fertilizer;
- 17 (8) Glue, sizing, or gelatin;
- 18 (9) Oilcloth, linoleum, or oiled rubber goods;
- 19 (10) Paint, shellac, turpentine, or oils;
- 20 (11) Rubber, gutta-percha, balata, creosote, or products treated therewith;
- 21 (12) Shoe polish;

22 (b) The operation of:

- (1) Bag cleaning works;
 - (2) Blast furnaces, coke ovens, smelting or ore reduction works;
 - (3) Boiler works;
 - (4) Forge;
 - (5) Rock crusher, stone mill, or quarry;
 - (6) Rolling mill;
 - (7) Yeast plant;
- (c) Production, manufacture, distribution, and storage of toxic, radioactive, flammable, or explosive materials, including chemicals and gases, fireworks, and explosives, except that any of the above referenced uses, except fireworks, may be stored or used in connection with a permitted commercial, business, or industrial purpose as allowed by Section 27.47.020(b) as incidental to the referenced permitted use without the requirement of obtaining a special permit;
- (d) Tanning, curing, or storage of raw hides or skins; stockyards or slaughter of animals or fowl; rendering fat; distillation of bones, coal or wood;
- (e) Dumping or reduction of garbage, offal, or dead animals;
- (f) Scrap processing operation, salvage yard, or enclosed disassembly operation in conformance with Section 27.63.500;
- (g) Refining or bulk storage of petroleum or natural gas, or their products;
- (h) The manufacture of acetylene, the transfer of the gas from one container to another, or the storage of the gas in containers having a capacity greater than the equivalent of 1,000 cubic feet at standard temperature and pressure;

1 (i) Stores and shops for retail sales and service exceeding 20,000 square feet in
2 floor area;

3 (j) Any permitted use which exceeds the maximum height permitted in the district;

4 (k) Broadcast towers;

5 (l) Outdoor theaters;

6 (m) Extraction of sand, gravel, and soil;

7 (n) Expansion of nonconforming uses;

8 (o) Historic preservation;

9 (p) Technical training centers;

10 (q) Wind energy conversion systems;

11 (r) Temporary shelter for the homeless;

12 (s) Health care facilities;

13 (t) Early childhood care facilities;

14 (u) Limited landfills;

15 (v) Race tracks for motorized vehicles;

16 (w) Mixed use redevelopment project;

17 (x) Sale of alcoholic beverages for consumption on the premises;

18 (y) Sale of alcoholic beverages for consumption off the premises;

19 (z) Private schools in conformance with Section 27.63.075;

20 (aa) Sexually oriented live entertainment establishments.

21 Section 10. That Section 27.49.040 of the Lincoln Municipal Code be amended
22 to read as follows:

1 **27.49.040 Permitted Special Uses.**

2 A building or premises may be used for the following purposes in the I-2 Industrial Park
3 District if a special permit for such use has been obtained in conformance with the require-
4 ments of Chapter 27.63:

- 5 (a) Mining, quarrying, and stone mills;
- 6 (b) Broadcast towers;
- 7 (c) Early childhood care facilities;
- 8 (d) Expansion of nonconforming use;
- 9 (e) Historic preservation;
- 10 (f) Wind energy conversion systems;
- 11 (g) Enclosed disassembly operation in conformance with Section 27.63.500;
- 12 (h) Sale of alcoholic beverages for consumption on the premises;
- 13 (i) Any permitted use which exceeds the maximum height permitted in the district;
- 14 (j) Storage of vehicles for sale and resale on any portion of the lot where parking
15 is permitted;
- 16 (k) Sexually oriented live entertainment establishments.

17 Section 11. That Section 27.51.050 of the Lincoln Municipal Code be amended
18 to read as follows:

19 **27.51.050 Permitted Special Uses.**

20 A building or premises may be used for the following purposes in the I-3 Employment
21 Center District if a special permit for such use has been obtained in conformance with the
22 requirements of this chapter and Chapter 27.63:

1 (a) Broadcast tower;

2 (b) Sale of alcoholic beverages for consumption on the premises, provided the
3 locational requirements of Section 27.63.680 have been met;

4 (c) Sale of alcoholic beverages for consumption off the premises, provided the
5 locational requirements of Section 27.63.685 have been met;

6 (d) Early childhood care facilities;

7 (e) Public elementary and high schools or private schools having a curriculum
8 equivalent to a public elementary or public high school;

9 (f) Sexually oriented live entertainment establishments.

10 Section 12. That Chapter 27.63 of the Lincoln Municipal Code be amended by
11 adding a new section numbered 27.63.730 to read as follows:

12 **27.63.730 Permitted Special Use: Sexually Oriented Live Entertainment Establishment.**

13 In the H-1, H-2, H-3, H-4, I-1, I-2, and I-3 zoning districts, a special permit may be
14 granted to allow a sexually oriented live entertainment establishment, subject to the following
15 conditions:

16 (a) Separation of a sexually oriented live entertainment establishment from other
17 sexually oriented live entertainment establishments. Not more than two sexually oriented live
18 entertainment establishments shall be located within 1,500 feet of each other measured from
19 the nearest access doors of the two establishments, regardless of whether such uses are located
20 in the same facility, separate facilities, or different zoning districts.

21 (b) Separation of sexually oriented live entertainment establishments from certain
22 other uses.

1 (1) Types of other uses to which applicable. The separation requirements of
2 this subsection shall apply to the location of the sexually oriented live entertainment
3 establishment in relationship to property zoned AGR, R-1, R-2, R-3, R-4, R-5, R-6, R-7, R-8 for
4 residential use; a church; a public elementary or high school or private school having a
5 curriculum equivalent to a public elementary or high school; an early childhood care facility;
6 a public park; a hospital; a public library; a public museum; an amusement park, recreation
7 area or playground that primarily serves persons younger than 18; a correctional facility; or
8 a residential treatment facility licensed by the State of Nebraska in which people reside while
9 receiving therapy, counseling, rehabilitation for physical, emotional or mental disease or
10 disability.

11 (2) General location requirements. No sexually oriented live entertainment
12 establishment shall be located on the same block with (i) any property zoned AGR, R-1, R-2,
13 R-3, R-4, R-5, R-6, R-7, or R-8 or (ii) any use specified in subsection (b)(1) above.

14 (3) Distance requirements. No sexually oriented live entertainment establish-
15 ment shall be located within 1,000 feet of (i) any property zoned AGR, R-1, R-2, R-3, R-4, R-5,
16 R-6, R-7, or R-8 or (ii) any use listed in subsection (b)(1) above measured from the nearest
17 access door of the sexually oriented live entertainment establishment to the property line of
18 such property or outdoor use or the nearest access door of a use within a building.

19 (c) Waiver of separation requirement. The City Council may modify or waive the
20 separation requirements in subsections (b)(2) and (b)(3) above upon a finding by the City
21 Council that there is sufficient justification for such adjustment and that there will be no

1 significant adverse affect on existing or reasonably anticipated future uses in the surrounding
2 area.

3 Section 13. That Sections 27.39.030, 27.41.040, 27.43.040, 27.45.030,
4 27.47.030, 27.49.040, and 27.51.050 of the Lincoln Municipal Code as hitherto existing be
5 and the same are hereby repealed.

6 Section 14. That this ordinance shall take effect and be in force from and after
7 its passage and publication according to law.

Introduced by:

Approved as to Form & Legality:

City Attorney

Staff Review Completed:

Administrative Assistant